

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

MICHAEL L. LAWLER,
Petitioner.

No. 2 CA-CR 2013-0330-PR
Filed November 7, 2013

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c); Ariz. R. Crim. P. 31.24

Petition for Review from the Superior Court in Maricopa County

No. CR1997000640

The Honorable William L. Brotherton Jr., Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Michael Lawler, Florence

In Propria Persona

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MEMORANDUM DECISION

Chief Judge Howard authored the decision of the Court, in which Judge Vásquez and Judge Miller concurred.

H O W A R D, Chief Judge:

¶1 Petitioner Michael Lawler seeks review of the trial court's order dismissing his notice of post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. "[A]bsent a clear abuse of discretion," we will not reverse a trial court's ruling in a proceeding for post-conviction relief. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Lawler has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Lawler was convicted of two counts of sexual assault. He later entered a plea of "no contest" to attempted sexual assault, attempted kidnapping, and two counts of sexual assault. The trial court imposed aggravated and presumptive terms of imprisonment totaling fourteen years on the attempted kidnapping and sexual assault counts and suspended the imposition of sentence and placed Lawler on lifetime probation for the conviction for attempted sexual assault.

¶3 Lawler's convictions and sentences on the trial counts were affirmed on appeal. *State v. Lawler*, No. 1 CA-CR 98-0192 (memorandum decision filed Apr. 1, 1999). He subsequently sought and was denied post-conviction relief on those counts as well as the remaining counts.

¶4 In 2012, Lawler again sought post-conviction relief, relying on *Missouri v. Frye*, ___ U.S. ___, 132 S. Ct. 1399 (2012) and *Lafler v. Cooper*, ___ U.S. ___, 132 S. Ct. 1376 (2012), and stating in his notice that he was entitled to relief based on a significant change in the law pursuant to Rule 32.1(g). Although Lawler indicated in the notice that a petition on the claim was attached, none was filed. The

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trial court summarily dismissed the notice, noting the petition was missing. The court also considered and denied Lawler's subsequent motion for reconsideration, in which he included the petition.

¶5 On review, Lawler maintains the trial court abused its discretion in dismissing the proceeding and in denying his motion for reconsideration. Lawler is correct that, in *Lafler* and *Frye*, the Supreme Court acknowledged a defendant has a right to effective representation by counsel during plea negotiations. See *Lafler*, ___ U.S. at ___, 132 S. Ct. at 1384; *Frye*, ___ U.S. at ___, 132 S. Ct. at 1407-08. But it has long been the law in Arizona that a defendant is entitled to effective representation in the plea context. See *State v. Donald*, 198 Ariz. 406, ¶¶ 9, 14, 10 P.3d 1193, 1198, 1200 (App. 2000). Indeed, Lawler raised a *Donald* claim in his first post-conviction relief proceeding and an evidentiary hearing on the matter was held before the trial court denied relief. Accordingly, any such claim of ineffective assistance of trial counsel is precluded. See Ariz. R. Crim. P. 32.1(g), 32.2(a)(2) (claim precluded if finally adjudicated in previous collateral proceeding), 32.2(c) (any court on review may determine claim precluded); *State v. Poblete*, 227 Ariz. 537, ¶ 8, 260 P.3d 1102, 1105 (App. 2011) (significant change in law “requires some transformative event, a clear break from the past”), quoting *State v. Shrum*, 220 Ariz. 115, ¶ 15, 203 P.3d 1175, 1178 (2009).

¶6 Therefore, although we grant the petition for review, relief is denied.